In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 331

ISAAC A. TAFT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) reported at 360 F. 2d 213.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 1966. Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to July 9, 1966, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

227-046—66

QUESTION PRESENTED

Whether the destruction of glass jars, and the non-tax paid whiskey contained in them, immediately after the arrest of petitioner, infringed his rights.

STATUTES INVOLVED

26 U.S.C. 5609(a) provides as follows:

> In the case of seizure elsewhere than on premises qualified under this chapter of any unregistered still, distilling or fermenting equipment or apparatus, or distilling or fermenting material, for any offense involving forfeiture of the same, where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same. In the case of seizure, other than on premises qualified under this chapter or in transit thereto or therefrom, of any distilled spirits on which the tax has not been paid or determined, for any offense involving forfeiture of the same, the seizing officer is authorized to destroy the distilled spirits forthwith. Any destruction under this subsection shall be in the presence of at least one credible witness. The seizing officer shall make such report of said seizure and destruction and take such samples as the Secretary or his delegate may require.

General Statutes of North Carolina, section 18–6.1 provides as follows:

> All members of the State Highway Patrol and other State and local law enforcing officers

shall, whenever seizing any vehicle on account of the unlawful transportation of intoxicating beverages, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, or making arrests of persons on account of same, refer the cases to the State court having jurisdiction thereof, to be determined by such State court in accordance with the law of this State. Any such officer who shall, in violation of this section, refer such cases to courts of another jurisdiction, shall be guilty of misfeasance in office and subject to a fine of one hundred dollars ($100.00).

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the Eastern District of North Carolina of removing, depositing and concealing non-tax paid whiskey in violation of 26 U.S.C. 7206(4). The court of appeals affirmed, *per curiam*.

The evidence showed that on the night of June 4, 1965, at the home of James Johnson near Greenville in Pitt County, North Carolina, petitioner was caught in the act of loading an automobile with cartons containing unstamped fruit jars filled with whiskey (Tr. 3–7). Petitioner was arrested by three federal agents and a Pitt County Alcoholic Beverage Control officer, Walter Taylor, who accompanied the federal officers. Two federal agents and Taylor testified without objection that, immediately after the arrest of petitioner and co-defendant Johnson, his brother-in-law, the fruit jars were examined, found to be without revenue

stamps and to contain distilled spirits (Tr. 8, 10, 24, 35, 36). They were thereupon destroyed on the spot. Counsel for petitioner made no request for the production of the jars or the whiskey in court, nor did he question any officer about the examination or destruction of the jars. Petitioner's defense, presented by the testimony of his brother-in-law who had pleaded guilty, was that a stranger known only as "Jesse" had left the whiskey, identified as such by Johnson, (and the automobile in which most of it was found) at Johnson's home for safekeeping for "a little while" (Tr. 44–50, 55).

ARGUMENT

In the court of appeals the petitioner for the first time contended that his constitutional rights to trial by jury, to confrontation of witnesses and to prepare his defense had been infringed by the destruction of the whiskey after his arrest. Petitioner, however, never challenged the fact that the substance in the fruit jars was whiskey. In fact the witness he called identified three of the cartons as three cases of whiskey and testified that his pay for keeping it was one jar to drink (Tr. 44). Had there been any question as to the nature of the liquid destroyed there would have been an issue of credibility on which the defense could have cross-examined and as to which the fact of destruction might have been considered for whatever worth a jury chose to attribute to it. Clearly, however, the destruction of the whiskey, which is authorized by statute, 26 U.S.C. 5609(a) *supra,* did not

bar the prosecution. *Burney* v. *United States,* 339 F. 2d 91 (C.A. 5); *Chandler* v. *United States,* 318 F. 2d 356 (C.A. 10).

Petitioner now urges for the first time that the destruction was illegal because it was not in the presence of a "credible witness" as required by 26 U.S.C. 5609(a). He argues that state agent Taylor was not a "credible witness" because, petitioner contends, under North Carolina Statute 18–6.1, Taylor was required to refer liquor violators to North Carolina courts for prosecution only under that State's laws. Section 18–6.1, however, applies only to arrests and seizures "on account of the unlawful transportation of intoxicating beverages, or equipment or materials" used in the manufacture of such liquor. Petitioner was not actually transporting intoxicating liquor when arrested. Moreover, the record does not suggest that it was agent Taylor who referred the case to the federal courts. Taylor was not in charge of the raid on Johnson's house; it was a "federal raid" (Pet. 8). Nor is it suggested that the North Carolina statute purports to prohibit a state officer from accompanying and assisting federal officers. But even assuming such assistance was improper under State law, it does not follow that Taylor was therefore a non-credible witness. Furthermore, two of the three federal agents who made the raid testified concerning the destruction of the liquor, and the petitioner does not contend that they were not credible witnesses within the meaning of Section 5609(a).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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